STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

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Analysis of House Bill 4054 and Senate Bills 343 and 356

Topic: Appraiser Ethics
Sponsor: Representative Mayes and Senators Pappageorge and Richardville
Co-Sponsors: Representative Marleau and Senators Brown, Kahn, Garcia, and Jansen
Committee: Banking and Financial Services
Banking and Financial Institutions

Date Introduced: January 22, 2007 (House Bill 4054)
March 7, 2007 (Senate Bill 343)
March 15, 2007 (Senate Bill 356)

Date Enrolled: December 18, 2008 Senate Bills 343 and 356
December 19, 2008 House Bill 4054

Date of Analysis: December 22, 2008

Position: The Department of Labor & Economic Growth supports the bills.

Problem/Background: One of the contributing factors to the current foreclosure crisis is the practice of steering an appraiser toward a predetermined value that will permit the financial institution to make a loan. This practice had the effect of getting many people into homes that they could not afford, which eventually led to their failure to make the payments and subsequent foreclosure. The Appraiser Institute in testimony to Congress on June 26, 2007 noted an independent study by the October Research Foundation that found that 90 percent of appraisers "were pressured by mortgage brokers, lenders, realty agents, consumers and others to raise property valuations to enable deals to go through".

Description of Bill: The bills amend Article 26 of the Occupational Code, the Secondary Mortgage Loan Act, and the Mortgage Brokers, Lenders, and Servicers Licensing Act. House Bill 4054 amends the Appraiser article of the Occupational Code by prohibiting an appraisal developed and communicated in violation of the adopted appraisal standards in response to a client or intended user's attempts to steer the appraisal by setting preconditions on the outcome or representing or implying that payment is predicated upon attaining a desired minimum appraised value. A new subsection is added making violation of the new prohibition a misdemeanor punishable by a fine of not more than $5,000 or imprisonment for not more than 3 years, or both. The Senate amended the bill at the request of the Appraisal Institute to define the term "setting preconditions for the outcome of an appraisal" so that it does not include topics that are required by the Uniform Professional Standards of Appraisal Practice (USPAP).

Senate Bills 343 and 356 make coercing or inducing an appraiser to inflate the value of real property used as collateral for mortgage loan a violation of the Secondary Mortgage Loan Act and the Mortgage Brokers, Lenders, and Servicers Licensing Act. Penalties for violations would be increased from $5,000 to $15,000 and might include imprisonment for not more than one year or both a fine and imprisonment. In addition to the criminal penalties, the maximum civil fine is increased from $1,000 to $3,000, with a limit of $30,000 for a transaction resulting in more than one violation, plus the costs of investigation.

Summary of Arguments

Pro: Inflated appraisals were a significant contributor to the current mortgage crisis. This practice should therefore be discouraged. The package effectively does that by prohibiting such activity and providing stiff penalties for violation.

Con: The bills will do little to deal with the problem of inflated appraisals. The definition of coercion is too narrow. Coercion is often much more subtle than that prohibited by the bill. Appraisers whose appraisals don't result in the lender's ability to make the loan may find themselves on a "blacklist" for that lender's work and they know it.

Fiscal/Economic Impact

(a) Department

Budgetary: The bills will have no budgetary impact on the department.

Revenue: The bills will have no impact on department revenue.

Comments:

(b) State

Budgetary: The bills will have no budgetary impact on state government.

Revenue: The bills will have no impact on state revenues.

Comments:

(c) Local Government

Comments: The bills do not effect local government.

Other State Departments: The Department of Attorney General and the Office of Finance and Insurance Regulation is also interested in this bill.

Any Other Pertinent Information: Michigan ACORN, the Michigan Mortgage Lenders Association, the Michigan Association of Realtors, the Michigan Bankers Association, and the

Department of Attorney General support the bills. The State Bar Consumer Law Section opposed the original bills.

Administrative Rules Impact: Changes may be needed to bring the department's rules into conformance with the amended requirements.